



# THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

PUBLISHED BY THE AUTHORITY

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নং 584 দিশপুৰ, সোমবাৰ, 16 অক্টোবৰ, 2017, 24 আহিন, 1939 (শক)

No. 584 Dispur, Monday, 16th October, 2017, 24th Asvina, 1939 (S.E.)

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

ELECTION DEPARTMENT :: DISPUR

## NOTIFICATION

Dated Dispur the 19<sup>th</sup> August, 2017,  
2nd Bhadra, 1939 (Saka)

**No. ELE.381/2016/29.**— The Election Commission of India's Notification No. 82/AS-HP/03/2014 dated 24th July, 2017 is hereby published for general information.

# **ELECTION COMMISSION OF INDIA**

**NirvachanSadan, Ashoka Road, New Delhi-110001**

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Dated: 24<sup>th</sup> July, 2017  
2 Shravana, 1939 (Saka)

## **NOTIFICATION**

No.82/AS-HP/03/2014: - In pursuance of Section 116(c) and Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order of the High Court of Guwahati dated 9<sup>th</sup> June, 2017 in the Election Petition No. 3 of 2014.

(HERE PRINT THE ATTACHED JUDGEMENT/ORDER DATED 09-06-2017  
OF THE GAUHATI HIGH COURT IN ELECTION PETITION NO. 3 OF 2014)

By order,

**NARENDRA N. BUTOLIA,**  
Principal Secretary,  
Election Commission of India.

**IN THE GAUHATI HIGH COURT**

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

PRINCIPAL SEAT AT GUWAHATI

(EXTRAORDINARY WRIT JURISDICTION)

**Election Petition No.3 of 2014**

Janak Lal Basumatary &amp; another ... .. Petitioners

**-Versus-**

Naba Kumar Sarania (Hira). ... .. Respondent

**BEFORE****HON'BLE MR. JUSTICE SUMAN SHYAM**

For the petitioners : Mr. B.Narzari, Senior Advocate  
Mr. B.C. Basumatary, Advocate.  
Mr. R. S. Chouhan, Advocate.

For the respondents : Mr. N. Dutta, Sr. Advocate,  
Mr. D. Mazumdar, Sr. Advocate.  
Mr. M. Sarania, Advocate.

Dates of hearing : **27-04-2017**

Date of Judgment : **09-06-2017**

**JUDGMENT AND ORDER (CAV)**

Heard Mr.B.Narzari, Learned Senior Counsel and Mr. B.C. Basumatary, learned counsel assisted by Mr. R. S. Chouhan, learned counsel appearing for the election petitioners. Also heard Mr. N. Dutta, learned senior counsel as well as Mr. D. Mazumdar, learned senior counsel, assisted by M. Sarania, learned counsel appearing on behalf of the respondent.

2. By filing this petition, the two election petitioners, who claim to be the electors of the No.5 Kokrajhar (ST) Parliamentary Constituency, have prayed for setting aside the election of the respondent/returned candidate viz. Sri Naba Kumar Sarania on the ground that the said constituency is a reserved constituency which can be filled up only by a candidate belonging to the Scheduled Tribe (ST) community of Bodoland Territorial Areas District (BTAD), Assam and the respondent does not belong to any of the Scheduled Tribe (ST) communities under the Constitution (Scheduled Tribes) Order, 1950. Urging as above, the election petitioners have sought annulment of the election of the sole respondent on the ground of improper acceptance of his nomination paper by the Returning Officer.

3. The undisputed facts of the case, as emerging from the record, is that on 29.03.2014 the Returning Officer had notified the schedule for holding election to the No.5 Kokrajhar (ST) Parliamentary Constituency (herein after referred to as 'the said Constituency'). As per the notice dated 29.03.2014, the last date of submission of nomination papers was 05.04.2014; the date of scrutiny of the nomination papers was fixed on 07.04.2014; the last date for withdrawal of nomination papers was 09.04.2014, and date of polling was 24.04.2014.

4. Besides the respondent, there were five other candidates who had filed nomination papers seeking election from the said constituency. The respondent had submitted his nomination claiming himself to be a Boro Kachari. Along with his nomination paper, the respondent had submitted a caste certificate dated 12.10.2011 issued by All Assam Tribal Sangha, Tamulpur District Unit notifying his ST status. The respondent had contested the polls as an Independent Candidate.

5. As per the schedule notified by the Returning Officer, the polling was held on 24.04.2014 wherein, recording of votes were done by means of Electronic Voting Machines (EVM). Counting of votes was held on 16.04.2014 and the results were



declared on the same day whereby the respondent was shown to have been elected by polling 6,34,428 valid votes by defeating his nearest rival by a margin of 3,55,779 votes. The votes polled by all the six candidates are given herein below in tabular form :-

Sl. No.	<i>Named of Candidates</i>	<i>Votes polled</i>
1	Naba Kumar Sarania (Hira)	634428
2	Urkhaw Gwra Brahma	278649
3	Chandan Brahma	243759
4	Sabda Ram Rabha	20074
5	Ranjit Shekhar Mooshahary	17537
6	Sansuma Khunggur Bwiswmuthiary	11239

6. The pleaded case of the election petitioners is that as per the Presidential Order of 1950 "Boro Kachari" is one of the notified ST Communities but "Sarania kachari" is not included therein. According to the petitioners, "Sarania kachari" is a distinct and separate community which is not a part of "Bodo Kachari" community. The 'Saranias' belong to "Sarania Kachari" community which was never a part of any Scheduled Tribe community recognized in the State of Assam and therefore, the said community is not a tribe or sub-tribe under any recognized schedule tribe communities included in the list available under Part-II of the Schedule to the Constitution (Scheduled Tribes) Order, 1950, as amended up-to-date. The petitioners have further stated that the Government of Assam vide Notification No.TAD/BC/491/07/117 dated 04.05.2010 had constituted a "Development Council for the Sarania Kacharis" with the object of providing maximum participation of the said community within the framework of the Constitution of India for their socio-economic-educational-cultural and ethnic advancements, recognizing the said community as a distinct and different group from the Boro Kacharies. The fact that the respondent belongs to the "Sarania Kachari"

community is admitted by the use of the surname "Sarania" and as such, the respondent was not eligible to contest the election from the said constituency, which is reserved only for the ST category candidates. According to the election petitioners, the nomination paper filed by the respondent had been improperly accepted by the Returning Officer as a result of which the outcome of the poll had been materially affected. As such, the election of the returned candidate/ respondent is liable to be set aside.

7. The respondent had contested the election petition by filing written statement inter-alia questioning the maintainability of the election petition under Sections 81 and 83(1) of the Representation of Peoples Act, 1951. The respondent has alleged that the election petition has been filed with a malafide intent and with the oblique motive of causing harassment and injury to the respondent at the instance of his political rivals who have a vested interest in the matter. While generally denying the averments made in the election petition, the respondent has stated that he is a member of the "Boro Kachari" community and 'Sarania' is only his surname. The respondent has denied the averment made by the election petitioners to the effect that 'Sarania' community is a distinct and separate community having a separate identity not forming a part of the Scheduled Tribe communities living in the BTAD area. According to the respondent, Boro Kachari is a community included in the list appended to the Constitution (Scheduled Caste and Scheduled Tribes) Order, 1950. Since the respondent belongs to the "Boro Kachari" community, The All Assam Tribal Sangha had issued an ST certificate to him which was produced before the Returning Officer at the time of submitting his nomination paper and as such, there was no infirmity in the acceptance of his nomination paper by the Returning Officer.

8. On the basis of the pleadings, this Court had framed as many as 7 (seven) issues for trial which are as follows :-

- "1. *Whether the petitioners have got any cause of action?*
2. *Whether the respondent belongs to 'Sarania' Community?*
3. *Whether 'Sarania' is a district (sic) separate community and not a Boro, Borokachari Scheduled Tribes as notified?*
4. *Whether proposal for inclusion of 'Sarania' community in the orders specifying Scheduled Tribes lists is pending and is still under consideration by the appropriate authority?*
5. *Whether nomination of the respondent was improperly accepted for election to the House of People from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State?*
6. *Whether the result of the election, in so far as it concerns the returned candidate i.e. the respondent, has been materially affected by improper acceptance of his nomination?*
7. *Whether the election of the respondent, i.e. Shri Naba Kumar Sarania (Hira), from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State is liable to be declared void?"*

9. During trial, the election petitioners had examined 5 (five) witnesses and produced 21 (twenty one) documents. The respondent had also examined 5 (five) witnesses and produced 11 (eleven) documents.

**Discussions and Decisions on the issues :-**

**Issue No. 1 – *Whether the petitioners have got any cause of action ?***

10. From the pleadings contained in the election petition, it is apparent that the challenge to the election of the respondent has been made on the sole ground that he does not belong to the "Boro-Kachari" community but is a member of the "Sarania Kachari" community, which is not recognized as Scheduled Tribe (ST) under the

Presidential Order of 1950. Since the No.5 Kokrajhar (ST) Parliamentary Constituency is reserved for ST candidates, hence, a declaration has been sought under Section 100(1)(b) of the Representation of Peoples Act, 1951 to the effect that the acceptance of the nomination paper submitted by the respondent was improper and, therefore, his election was void.

11. The petitioner no. 1 has produced copy of the Electoral Roll of No. 29 Kokrajhar (W) ST Legislative Assembly constituency and his Electoral Photo Identity Card (EPIC) as Exhibits 1 and 2. Likewise, Electoral Roll of No. 29 Kokrajhar Legislative Assembly Constituency, under part-29 of village Malandubi and the Electoral Photo Identity Card of the petitioner No 2 has been brought on record and marked as exhibits 3 and 4. From the above documents, it is prima facie established that both the petitioners are electors of the said constituency. In view of the above, I am of the opinion that there is cause of action for filing the election petition. Although the maintainability of the election petition had been challenged by raising grounds under Section 81, 83(1) and 117 of the Representation of Peoples Act, 1951, yet, the said grounds were not pressed by the respondent at the appropriate stage of the proceeding. Therefore, I am not inclined to non-suit the petitioners on the maintainability issue. As such, this issue is answered in the affirmative and in favour of the petitioners.

**Issue no. 2 :** Whether the respondent belongs to "Sarania" community ?

**Issue No. 3 :** Whether Sarania is a distinct and separate community and not a Boro, Boro-Kachari Scheduled Tribe as notified.

12. Both these issues are interconnected and as such, I propose to deal with both the issues together.

13. The PW-1 Janaklal Basumatary, who is the election petitioner no.1, has deposed in his examination-in-chief that one Daorao Dekhreb Narzary of Kokrajhar had

filed an application under the Right to Information Act for furnishing copies of nomination papers and election result sheets of the respondent. Accordingly, the Election Officer, Kokrajhar furnished the same to the applicant on 02/06/2014 and he got the said copies from Daorao Dekhreb Narzary, which are annexed as Ext. 5 (series). But Daorao Dekhreb Narzary has not been called as a witness to prove those documents. Therefore, none of the Ext -5 (series) documents can be regarded as evidence.

14. According to the PW-1, the grandfather and father of the respondent Naba Kumar Sarania are not Boro-Kachari and Scheduled Tribe (Plain) but they belonged to "Soru-Koch" community of Assam, who are notified as OBC. The deponent has deposed that it may so happened that the father of the respondent, namely, Lakhi Kanta Sorukoch was a follower of Shri Shri Sankardeva and became "Sarania". The PW-1 has further deposed that "Sarania" is a distinct and separate community of Assam. The respondent may belonged to "Sarania" community but does not hail from Boro-Kachari community and that "Sarania" is not notified ST(P).

15. The PW-1 has also deposed that the legacy certificate and the land documents produced in the form of Ext. 6, 7 and 8 which are the copies of Jamabandi for Surveyed Village of Dag No. 574 and Patta No. 29(O)/154(N) of Village Digalipar, would go to show that the father of the respondent used to write the surname "Soru-koch". But there are no pleading in the election petition supporting those documents.

16. In his examination-in-chief, the deponent had also stated that the "All Assam Tribal Sangha" is not the authority to issue caste certificate without verification of caste and, therefore, the certificate issued by the All Assam Tribal Sangha, Tamulpur district Unit in favour of the respondent was void.

17. During his cross examination, the PW-1 had admitted that he had written on topics like "Foreigner Issues" and other social issues and that he had to face criticism for taking a stand on the issue of "Saranias". PW-1 had also admitted that he was one of the petitioners in the writ petition filed before this court challenging the caste certificate issued to the respondent by the All Assam Tribal Sangha where-in a prayer for restraining issuance of caste certificates to communities other than those enlisted in the revised notification dated 01/04/2003 had been made but in the said writ petition, there is no reference to the communities other than "Sarania" community. In his cross examination, the PW-1 had also stated that "Saranias" came from several communities and some "Saranias" have come from "Boro-Kachari" or "Rabha".

18. The election petitioner no. 2 Shri Ashok Brahma did not appear before the Court as a witness nor did he sign or verify the pleadings brought on record on behalf of the election petitioners.

19. PW-2 Sri Baneshwar Narzary is an official of Tamulpur Block who had appeared on receipt summons issued by this court. PW-2 has produced the copy of the Jamabandi of the plot covered by Dag No. 574, patta No. 154 of Village Digalipar under Pub Baksa Mouza which was marked as Exhibit-19.

20. PW-3 Shri Ganesh Swargiary, who is also an elector of No.5 Kokrajhar (ST) Parliamentary Constituency had supported the version given by the PW-1 and has stated that the respondents does not belong to Boro-Kachari community but his parents belongs to "Koch" community. PW-3 had also stated that the caste certificate issued by the President of All Assam Tribal Sangha, Tamulpur District, certifying that the respondent was a Boro-Kachari was invalid and had been issued in violation of the Constitution (Scheduled Tribe) Order, 1950.



21. Similarly, PW-4 Mahesh Chandra Brahma had deposed that he was the Vice-President of Kokrajhar District Tribal Sangha during the year 2003. The witness has deposed that he was aware of the letter dated 29/09/2003 issued by the All Assam Tribal Sangha and as per resolution no 2, Sarania Kachari community was not notified as Schedule Tribe. In his cross examination the PW-4 has admitted that he has not produced any evidence to show that he was the Vice-President of the Kokrajhar District Tribal Sangha during 2003.

22. PW-5 Sumon Roy is the employee of the Internet Café situated at Kokrajhar who had given the printout of the gazette notifications relied upon by the petitioners by downloading the same from the internet.

23. The DW-1 i.e. the respondent, in his examination-in-Chief, had emphatically stated that he belongs to the "Boro-Kachari community" and, therefore, he was a Schedule Tribe (P) coming within the purview of the Presidential Order of 1950. DW-1 had deposed that by the notification dated 22/06/2009, the authority and responsibility for identifying the Scheduled Tribe communities and to issue certificate to the ST (Plains) and ST(Hills) of Assam was entrusted by the State Government upon the All Assam Tribal Sangha and the said body has issued the caste certificate dated 12/10/2011 (Ext-5 series) in his favour which is still holding the field. The witness has also deposed that the notification dated 04/05/2010 was published by the Principal Secretary to the Government of Assam, WPT & BC Department, constituting a Development Council for the development of "Sarania-Kachari" on a completely different context.

24. During cross examination, the DW-1 has stated that he had represented himself as a "Boro-Kachari" in his nomination paper filed before the Returning Officer.

The witness has denied that his father's name was Lakhi Kanta Sorukoch or that the name of his mother was "Dipika Sorukoch". According to the DW-1, "Sarania" is the surname just like any other surname as Das, Deka, Brahma, Choudhury, Sarkar etc. DW-1 had further stated that since there is no community called "Sarania", hence, he did not have the knowledge as to which God was worshiped by the community. He had further admitted that some people having the surname "Sarania" chant and sing "Nam-Kirtan". The DW-1 had also stated that persons belonging to Boro-Kachari community believe in many God and Goddess. The witness has further deposed that there are Boro-Kacharis who did not know the Boro language and some Boro-Kacharis are even having surnames like Choudhury, Deka, Das, Sarania and do not speak Bodo (Boro) language.

25. The documents introduced by the election petitioners had been taken on record under objection from the respondent. The respondent has also raised strong objection as regards Exhibits 6,7 and 8 on the additional ground that there are no pleadings in the election petition permitting the petitioners to adduce any such evidence.

26. Referring to the pleadings contained in paragraph 8 and 9 of the election petition, wherein it has been averred that "Sarania" is a distinct and separate community and their members are not Boro-Kachari Scheduled Tribe and that by notification dated 04/05/2010, the Government of Assam had constituted a "Development Council for Sarania-Kacharis" for providing maximum participation of the said community within the constitutional frame work, Mr. Basumatary submits that the aforementioned statements have not been specifically denied in the written statement. As such, the said statements would have to be treated as admitted by the respondent as per Order VIII Rule 5 of the CPC. Therefore; submits Mr. Basumatary, the election



petition is liable to be allowed only on the admission made by the respondent. In support of his aforesaid argument, Mr. Basumatary has relied upon the following decisions of the Supreme Court:-

- i. *Civil Appeal No. 7502/2004 (Union of India Vs. M/s. Agarwal Iron Industries).*
- ii. *(1993) 5 SCC 223 (Lohia Properties Pvt. Ltd. Vs. Atma Ram Kumar).*
- iii. *Uttam Singh Duggal and another Vs. United Bank of India and others.*

27. Referring to the evidence on record, the learned counsel for the petitioners has further contended that "Saranias" are those who have taken shelter under Mahapurush Sankardeva and they follow the tenets like Guru, Deva, Nama and Bhakat, which are not practiced by the Boro Tribes. According to Mr. Basumatary, followers of Mahapurush Sankardev chant "Kirtan" in the "Naam Ghars" and there is a Naamghar in the Dighalipar village where the respondent belongs to. Mr. Basumatary has also placed heavy reliance on the resolution adopted by the All Assam Tribal Sangha, which was circulated by the letter dated 29/09/2003 (Ext-12) as well as the documents brought on record in the form of Ext-14 series, to contend that the process of identifying the "Sarania-Kachari" as a ST community is still under progress and, therefore, it is self evident that the respondent does not belong to a sub-tribe or sub-caste of the Boro-Kachari community. According to Mr. Basumatary since "Sarania-Kachari" is yet to be recognized as a Scheduled Tribe (ST) community, hence, neither could the All Assam Tribal Sangha, Tamulpur District have issued the certificate in favour of the respondent nor could the Returning Officer accept his nomination paper for the No. 5 Kakrajhar (ST) Parliamentary constituency. The learned counsel further submits that whether the petitioner belongs to one of the communities mentioned in the Presidential Order of 1950 has to be determined on the basis of the list furnished

in the Presidential Order itself without making any further enquiry as to whether the "saranias" constitute sub-caste of the Tribes included in the said notification. In support of his aforesaid argument, the learned counsel for the petitioners has relied upon the following decisions :-

- i. *AIR 1965 SC 1557 (Bhaiyalal Vs. Hari Kishan Singh and others).*
- ii. *AIR 1990 SC 991 (Srish Kr. Chodhury Vs. State of Tripura and others).*
- iii. *AIR 2001 SC 393 (State of Maharashtra Vs. Milind and others).*

28. Mr. D. Mazumdar, learned senior counsel for the respondent, on the other hand, has contended that the arguments advanced by the election petitioner are not only devoid of substance but the petitioners have also failed to lead any evidence in support of the pleadings. Pointing at the documents brought on record by the petitioners, the learned senior counsel submits that those are only the photocopies and hence, not admissible as evidence. He further submits that none of the documents have been proved as per the requirement of section 61 of the Indian Evidence Act, 1872. According to Mr Mazumdar, save and except the ST certificate dated 12.10.2011, none of the other documents are admitted by the respondent and hence, cannot be relied upon in this case.

29. By referring to the copy of the writ petition bearing number WP(C) No. 2580/2014, which, along with its enclosures, has been adduced by the respondent as Exhibit-A(series) Mr. Mazumdar submits that the ST certificate issued in favour of the respondent though, challenged by the petitioner no. 1 before this Court, no effort has been made by the election petitioners to pursue the same and the writ petition is still pending disposal . As such, the ST certificate (Ext-A) is still holding the field and taking note of the ST certificate and also the fact that the respondent belongs to the "Boro-Kachari" community, his nomination paper had been accepted by the Returning

Officer. Under the circumstances, submits Mr. Mazumdar, there is no justifiable ground for this Court to declare the election of the respondent as void.

30. By referring to the decision of the Supreme Court in the case of *Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others* reported in (1994) 6 SCC 241, Mr. Mazumdar submits that if the election petitioners had any doubt about the validity of the Caste Certificate issued in favour of the respondent, they ought to have raised the issue before the State Level Scrutiny Committee constituted for the purpose under the directions of the Hon'ble Supreme Court but in the present case, admittedly, no such step had been taken by the election petitioners and there is also no explanation as to why they had failed to raise the issue at the relevant point of time before the competent forum. According to Mr. Mazumdar, in the case of *Anjali Medhi Vs. State of Assam and others* reported in (2012) 2 GLR 324, when an issue was raised regarding the validity of the social status of a reserved category person, this Court had directed the State Level Scrutiny Committee to look into the matter by holding that it is the Scrutiny Committee that would be the competent authority to verify the social status of reserved category persons. Mr. Muzumdar submits that the issue sought to be raised by the petitioners squarely falls within the domain of the State level Scrutiny Committee and the said issue cannot be agitated in an election petition.

31. Mr. Mazumdar further contends that the respondent has categorically denied the assertions that Sarania-Kachari is a distinct community or that the respondent is not a Boro-Kachari. In view of the above, the burden to prove the assertions made in the election petition would lie upon the petitioners as per Section 101 of the Evidence Act. But in the present case, submits the learned senior counsel, petitioners have failed to discharge the burden of proof cast under Section 101.

32. The learned counsels of both the parties have relied upon a few celebrated literary works on the subject to drive home their respective arguments on the contentious issue. Mr Basumatry has relied upon the book entitled " The Kacharis" written by Rev. Sidney Endel, " Asomiya Manuhor Itihas" by Nagen Saikia, "Tribes of Assam" by B.N.Bordoloi as well " Sarania Kachari Samaj Aru Sanskriti" by Sri Nalini Deka to impress upon this court that the religious philosophy of the Boro kachari tribe centres around the super power of "Bathou Barai" which is analogous to Shiva of Hindu Trinity and that the persons of Boro kachari origin always use surnames that end with the suffix "ArY" such as Basumatary, Doimary, Khaklary, Mushahary etc.

33. By referring to the books "The Kachari" by Sidney Endel and "A history of Assam" by Sir Edward Gait, Mr Mazumdar, on the other hand, has submitted that these books give a brief account of the history of Assam and are the most authentic and widely accepted monographs on the subject. According to Mr Mazumdar, "Kacharis" are the aborigines or earliest known inhabitants of the Bramhaputra Valley in Assam and they have features of Mongolian types. Mr Mazumdar submits that people belonging to Boro, Boro Kachari, Rabha, Sonowal, Thengal, Deuri, lalung etc are actually the sub-tribes of Kachari. The learned senior counsel submits that in course of time, a section of these tribes have started adopting other surnames such as Deka, Das, Choudhury, Saikia, Barua, Thakuria, Mazumdar, Sarkar etc.

34. Mr Mazumdar adds that some sections of the sub-caste of Kacharis including the Boro Kacharis took shelter or "sharan" under Mahapurash Shankardev and adopted the surname " sarania" without however, losing their tribal identity. In support of his aforesaid argument, Mr. Mazumdar has relied upon the yearly book published by the Assam State Legislative Assemble to contend that persons with non-tribal surnames such as "Das" and "Deka" have been elected from these reserved constituencies on a

number of occasions in the past.

35. From a careful scrutiny of the materials on record, it is crystal clear that the basic contention of the election petitioners are three fold viz. that Sarania-Kachari is a distinct and different community separate from Boro-Kachari, that the respondent belongs to Sarania-Kachari community and that Sarania-Kachari is not a community included in Constitution of India (Schedule Tribe ) Order, 1950 as amended by the SC and ST Orders (Amendment) Act, 2002.

36. It is not in dispute that the No.5 Kokrajhar (ST) Parliamentary Constituency is a seat reserved for the Schedule Tribe (Plain) candidate. It is also not in dispute that Borokachari is included in the list of communities appended to the Presidential order of 1950.

37. Section 4 of the Representation of Peoples Act, 1951 prescribes the qualification for membership of the House of People. As per section 4(c) of the Act, 1951, in case of a seat reserved for the Schedule Tribes in the autonomous districts of Assam, a person shall not be qualified to be chosen to fill the seat unless he is a member of any of those Scheduled Tribes and is an elector of the Parliamentary Constituency in which such seat is reserved for. Section 4 of the Act of 1951 is quoted here-in below for ready reference:-

**"4. Qualifications for membership of the House of the People – A person shall not be qualified to be chosen to fill a seat in the House of the People , unless –**

- a) *In the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;*
- b) *In the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of the State or of any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;*

- c) *In the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district;*
- cc) *In the case of the seat reserved for the Scheduled Tribes in the Union territory of (Lakshadweep), he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of this Union territory;*
- ccc) *In the case of the seat allotted to the State of Sikkim, he is an elector for the Parliamentary constituency for Sikkim;*
- d) *In the case of any other seat, he is an elector for any Parliamentary constituency."*

38. By issuing the notification dated 1/4/2003, the Deputy Secretary to the Government of Assam, WPT & BC Department has notified the list of SCs and Sts of Assam as per the Schedule Caste and Schedule Tribes Order (Amendment) Act, 2002.

As per the said notification, following are the names of STs of Assam :-

1. *Barmans*
2. *Boro, Boro Kacharis*
3. *Deori*
4. *Hojai*
5. *Kachari, Sonowal*
6. *Lalung*
7. *Mech*
8. *(Miri) Miching*
9. *Rabha*
10. *Dimasa*
11. *Hajong*
12. *Singpho*



13. *Khampti*14. *Garó*

39. Having regard to the ground taken in the election petition, it is thus apparent that in order to succeed in the election petition, the petitioners must first succeed in establishing that the respondent does not belong to any of the aforesaid communities included in the Presidential Order of 1950 (as amended).

40. It would be significant to note here-in that the PW-1 Janaklal Basumatary has testified before this court that some Saranias are Boro kacharis. The statement made by the PW-1 in his cross –examination is extracted here-in below for ready reference :-

*"Sarania is a distinct and separate community and they are not Boro-Kachari. As far as I know, Saranias' are the followers of Baishnab Nam Dharma, which has been introduced by Sri Sri Sankardeva. Ext. A(1) is a representation signed by me along with three others and addressed to SDO(Civil) Tamulpur dated 19<sup>th</sup> April, 2014. The subject matter of Ext. A(1) is "countersigning the Scheduled Tribe certificate of Naba Kumar Sarania, mistake, recall and cancellation matter regarding." By the contents of the 4<sup>th</sup> paragraph of Ext. A(1), what I meant is that Saranias' come from several communities and some Saranias have come from Boro Kachari or Rabha. According to Ext. A(1) I meant that some Saranias may be the descendants of Boro Kachari and Rabha but by writing Sarania as their surname they cannot be identified because Sarania Kachari is not a part of Boro Kachari."*

41. The aforesaid statement of the PW-1 has been further affirmed in the written arguments filed on behalf of the petitioners. It is, therefore, clear that even to the knowledge and understanding of the election petitioners, some "Saranias" have their roots to the Boro-Kachari or Rabha communities. Significantly, both these communities are included in the list of communities under the Presidential Order of 1950. Having admitted as above, the burden was upon the election petitioners to lead

evidence to show that the respondent does not belong to those "Saranias" whose roots are traceable to the Boro-Kachari or Rabha. From the materials on record, I find that the election petitioners have failed to establish the said fact by leading proper evidence.

42. There is no evidence on record to show that "Sarania-Kachari" is a different community. Rather the materials on record, goes to indicate that Sarania is a surname adopted by persons coming from different streams including the kacharis, who had become followers of the great Vaishnava Saint from Assam Srimanta Sankaradeva. It is a matter of common knowledge that Mahapurusha Srimanta Sankaradeva (1449-1568) had worked in diverse fields like religion, literature, music, dance, drama, architecture, and social reconstruction and had a large numbers of followers in Assam as well as other parts of the country drawn from different communities. The above position also finds support from the evidence adduced by the PW-1.

43. From the materials available on record, it appears that the "Saranias" do not believe in idol worship but resort to chanting "Kirtans (Nama)" in a designated place called "Namghar" (a place for congregational worship). Materials on record further indicate that large number of tribal people belonging to the Boro-Kachari were traditionally believers of "Bathou religion" whereby the practice is to worship "Bathou" (Cactus), which was not the practise followed by the saranias.

44. The issue before this court is whether respondent is a ST within the meaning of the Presidential Order of 1950. The above issue will have to be decided by looking at the Presidential Order of 1950 as it stands. While doing so, it will be impermissible to form an opinion merely on the basis of the surname used by the respondent nor can the court go into the question of religious practises followed by him. That is because religious affinity of the respondent cannot be said to have a bearing on the question of



his ethnicity or tribal status.

45. The petitioners have placed heavy reliance on the notification dated 4-5-2010 and the letter dated 29/09/2009 to contend that "Saranja kachari" is a separate community and that the respondent is not entitled to be recognized as a tribal. But the above contention of the petitioners is found to be untenable for the following reasons. Firstly, the establishment of a Development Council for the benefit of Sarania Kacharis, by itself cannot lead to the conclusion that Sarania Kachari is a separate community bereft of their original tribal identity. Secondly, a declaration to the effect that "Saranja kacharia" is a separate community can only be made on the basis of cogent evidence in an appropriate proceeding which exercise would be impermissible in an election petition.

46. Coming to the resolution adopted by the All Assam Tribal Sangha, as circulated by the letter dated 29/09/2009, from a perusal of the resolution, I find that the purport of the proposals contained in the letter dated 29/09/2009 are completely different from what is being sought to be projected by the petitioners. For the purpose of ready reference, the proposals circulated by letter dated 29/09/2009 (Ext-12) are extracted herein below :-

"Proposal No.1

*To remove the difficulties to identify the communities of plains tribal of Assam of, Boro, Rabha, Mising, Sonowal Kachari, Tiwa, Deuri, Mech, Hazong etc. It is resolved to make it compulsory to use their respective tribal surname instead of using non-tribal origin surnames. Those who had obtained caste certificate by using non-tribal origin surnames may be asked to obtain fresh certificate by using the tribal origin surname.*

Proposal No. 2

*The Sarania Kachari community as on today is not notified as scheduled Tribe. Hence if Sarania Kacharies has to get Scheduled Tribe certificate, they have to use Boro or Rabha origin surname, as the Sangha's Chilapathar conference proposal is retained. It is resolved that the Modahi community also is not notified as scheduled Tribe, they also have to use Rabha origin surname to get scheduled Tribe certificate.*

Proposal No.3

*Rangiya district tribal Sangha has been issuing certificates to the non-tribal original surnames which should be stopped immediately.*

*The above decision may be executed w.e.f. 28.9.2003. Thanks."*

From a careful reading of above the proposals, I am of the considered opinion that the idea behind adoption of the resolutions was to restrict the tribals from using non-Boro (or non-tribal) surnames if they wanted to obtain ST certificates. Therefore, these resolutions cannot even remotely signify that persons writing the surname of "Sarania" are not Boro kacharis.

47. In the case of *Bhaiyalal (Supra)*, the Hon'ble Supreme Court had the occasion to deal with a question of similar nature wherein a challenge was made to the validity of the election of the appellant in a reserved seat at Bariache in the district of Sehore in Madhya Pradesh whereby his election was challenged on the ground that the appellant belonged to Dohar caste and was not a Chamar, which was a notified scheduled caste. While answering the issues raised therein, the Hon'ble Supreme Court had made the following observation.

*"8. Incidentally, we may point out that the plea that the Dohar caste is a sub-caste of the Chamar caste cannot be entertained, in the present proceedings in view of the Constitution (Scheduled Castes) Order, 1950. This Order has been issued by the President under Art.*

*341 of the Constitution. Article 341(1) provides that the President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or part of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be. Sub-Article (2) lays down that Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause, shall not be varied by any subsequent notification. It is thus clear, that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Art. 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi, and so in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Art. 341. In the case of B. Basavalingappa V. D. Munichinnappa, Civil Appeal No. 401 of 1964, dated 23-9-1964; (reported in AIR 1965 SC 1269), this Court had occasion to consider a similar question. The question which arose for decision in that case was whether respondent no. 1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order and while holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding the Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would be; "it may be accepted*

*that it is not open to make any modification in the Order by producing evidence to show, for example, that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A."*

*That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to be included in the Order, cannot be accepted."*

48. In the case of *Srish Kr. Choudhury (Supra)*, the Supreme Court after discussing the law in various judicial pronouncements had observed that the entries in the Presidential Order have to be taken as final and the scope of interfering and admissibility of evidence is confined within the limitation indicated. It would not be open to the Court to make any addition or subtraction of the Presidential Order.

49. Similar view has been taken by the Supreme Court in the case of *State of Maharashtra vs. Milind and others (Supra)*, wherein the following observations have been made by the Supreme Court in paragraph 35 of the judgement :-

**"35)** *In the light of what is stated above, the following positions emerge :-*

1. *It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.*

2. *The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.*

3. *A notification issued under Clause (1) of Art. 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Art. 342 only by the Parliament by law and by no other authority.*

4. *It is not open to State Governments or Courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Art. 342.*

5. *Decisions of the Division Benches of this Court in Bhaiya Ram Munda V/s. Anirudh Patra, (1971) 1 SCR 804 and Dina V/s. Narayan Singh, (1968) 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter. "*

50. From the aforementioned judicial pronouncements, it is crystal clear that an enquiry as to whether "saranja kachari" is a separate caste/ community or as to whether the respondent belongs to "Sarania kachari" Community or not would be impermissible in an election petition. It will also not be permissible for the court to go into the question as to which community the respondent belongs to. Since the respondent claims to be a member of the "Boro Kachari" community which is a listed community under the Presidential Order of 1950 and he is holding a valid caste certificate to that effect, there would be no scope for this court to hold that the

respondent belongs to some other community. The issue Nos 2 and 3 are, therefore, decided in the negative and against the petitioners.

***Issue No. 4 - Whether proposal for inclusion of 'Saranja' community in the orders specifying Scheduled Tribes lists is pending and is still under consideration by the appropriate authority?***

51. In view of the discussions made in the foregoing paragraphs in connection with the issue nos. 2 and 3, this issue is also decided against the election petitioners and in favour of the respondent.

***Issue No. 5- Whether nomination of the respondent was improperly accepted for election to the House of People from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State?***

***Issue No. 6 - Whether the result of the election, in so far as it concerns the returned candidate i.e. the respondent, has been materially affected by improper acceptance of his nomination?***

52. As mentioned above, the key question that the Court would be called upon to decide in the present proceeding is as to whether the Returning Officer had improperly accepted the nomination papers submitted by the respondent. What would be significant to note herein that the electoral records containing the nomination papers submitted by the respondent has not been called for by the Court since no such application was ever made by the election petitioners. The arguments advanced by the petitioners counsel is entirely based on photocopies of documents allegedly obtained under the RTI, Act which have not been proved as per the requirement of law. It is, however, not in dispute that the ST certificate (Ext-5) issued in favour of the respondent was produced by him before the Returning Officer and the said certificate is valid till today.

53. While accepting the nomination paper, the Returning Officer is required to be guided by the provisions contained in the Conduct of Election Rules and the Election Manual. The respondent had submitted his nomination paper by declaring him as ST



candidate belonging to the Boro-Kachari community. The said claim of the respondent was supported by a caste certificate issued by the competent authority. There is nothing on record to indicate that any of the other candidates contesting the election from the constituency had ever raised any objection as to the candidature of the respondent. Under the circumstances, there was no valid reason for the Returning Officer to reject the nomination paper of the respondent on the above stated ground. In view of the above, this issue is also answered in the negative and against the election petitioners.

***Issue No. 7 – Whether the election of the respondent, i.e. Shri Naba Kumar Sarania (Hira), from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State is liable to be declared void?***

54. The right to challenge the election of a returned candidate by filing an election petition is a right available under the statute, i.e. *The Representation of People Act, 1951*. Section 100 of the Act of 1951 lays down the grounds on which the election of a returned candidate can be held to be void. In the present case, the petitioners have challenged the election of the respondent under Section 100(1)(b) of the Act of 1951. However, as discussed above, the petitioners have failed to establish that the election of the respondent contravenes Section 100(1)(b) of the Act of 1951 in any manner. As such, this issue is also decided against the election petitioners.

55. For the reasons mentioned here-in above, this election petition is held to be devoid of any merit and the same is accordingly dismissed.

There would be no order as to costs.

**SUMAN SHYAM  
JUDGE**

**DIGANTA DAS,  
Joint Chief Electoral Officer, Assam,  
Dispur.**